IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 18TH JANUARY 2007 / 28TH PAUSHA 1928

W. A.No. 1601 of 2006(A)

AGAINST THE JUDGEMENT/ORDER IN WPC.11165/2006 Dated 07/04/2006

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APPELLANT: RESPONDENT
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1. THE STATE OF KERALA REPRESENTED
BY THE SECRETARY, SOCIAL WELFARE DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE SECRETARY,
PERSONNEL AND ADMINISTRATIVE DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SRI. BENNY GERVASIS, GOVERNMENT PLEADER

RESPONDENTS:
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1. V.G.ANNAMMA, VAZHAYIL HOUSE,
KIZHAKKUMBHAGOM P.O., NIRANAM.

2. GEETHADEVI.D., CHETTITHUADATHIL,
VELLAYIL P.O., THIYADICKAL, THIRUVALLA.

BY/

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.A. ABDUL GAFOOR & K.R. UDAYABHANU, JJ

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W.A. NO. 1601 OF 2006

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Dated this the 18th day of January 2007

JUDGMENT

Abdul Gafoor,J

The Government is in appeal against the judgment in W.P. (C). No. 11165/2006 whereby services of two writ petitioners have been directed to be regularised in accordance with law. The Government Pleader submits that they are not entitled at all for regularisation in service in the light of Ext.P6 under which they claim that benefit.

2. On the other hand, it is submitted by the counsel for the writ petitioners that Ext.P6 is a continuation of Exts.P3 and P4. Therefore, insistence of 179 days in Ext.P6 is not justified and that the intention of Ext.P6 is to extent the benefit of regularisation to those who had been appointed as provisional hands on temporary basis in government service during the period from 15.08.98 to 15.08.99 which shall in the case of non-

teaching staff for 179 days and in the case of teaching staff until the closing of the academic year. Therefore, non competition of 179 days until 15.08.1998, as contended by the Government Pleader, cannot be a reason to deny regularisation. So, there is no reason at all to interfere with the judgment.

3. There is no question of regularisation of any of the petitioners because they had never been in service on the date of Ext.P6. They can at the best, even in terms of Ext.P6, seek for re-appointment on a regular basis. It is true that Ext.P3 issued, in the wake of Golden Jubilee of India's independence, directed that physically handicapped persons appointed on temporary basis under Rule (9)(i) of the General Rules in KS & SS Rules. during the period from 01.01.1997 to 31.12.1997 be allowed to continue in service pending consideration of their regularisation. Later Ext.P4, Government order was issued, extending the benefit of Ext.P3 to those appointed during the period from 01.01.1998 to 14.8.1998 as well. Again Ext.P5 orders were issued, overruling the objections of Public Service Commission,

regularising the services of such hands who were continuing in service on the date of Ext.P4, Government Order and also to reappoint those who had already been relieved from service before passing the said government order, but appointed during the period mentioned in Ext.P3 and P4. Even at that time it was under consideration of the Government whether physically handicapped persons appointed on temporary basis during 15.08.1998 to 15.8.1999 could be regularised. But no orders were passed during the tenure of their temporary appointments. Necessarily, all have been sent out of service on expiry of the term of the temporary appointment. Accordingly, in Ext.P5 it was directed that the persons so appointed during the said period would be considered for re-appointment/regularaisation. Therefore, sanction was accorded for creating supernumerary posts for re-appointment/regularisation of such hands subject to certain conditions. The prime condition is as follows:

> The physically (temporary) employees who were engaged in public services through Employment Exchange under Rule 9(a)(1) of K.S.S.R during the period from 15.8.98 to 15.8.99, for 179 days will be reappointed in service.

This condition envisages that the incumbent appointed during the period from 15.08.1998 to 15.8.1999, in order to get re-appointment or regularisation as the case may be, should have worked for 179 days.

4. The Government Pleader submits that the period of appointment of petitioner No.1 was from 03.12.1998 to 30.03.1999 and that of petitioner No.2 was from 09.04.1999 to 4.10.1999. The first among them did not have 179 days service and the latter could not complete 179 days before the cut off date namely 15.8.1999. Therefore, the learned single Judge was not justified in directing their re-appointment/regularisation as per the impugned judgment.

5. The answer to this contention, as already submitted, by the counsel for the respondent is that every temporary appointment shall be for a definite term from the date of appointment, viz., until closing of the academic year in the case

of teaching staff and for 179 days in the case of non-teaching staff. Therefore, petitioner No.1 who was appointed on temporary basis as a junior language teacher had to be terminated on 30.03.1999, the date of closing of the concerned academic year and the latter could complete 179 days only later than 15.08.1999. Their appointment commenced within the period specified in Ext.P6. Re-appointment/regularisation of temporary hands is a concession. In order to get the concession they have to be rigorously and scrupulously satisfy the condition for regularisation.

6. The prime condition for regularisation as per Ext.P6 is that the incumbent should have completed a period of 179 days. But nowhere it is stated that this completion shall be on any date between 15.08.1998 to 15.08.1999. What is envisaged is that appointment shall be on a date within the said period. In the case of both, their appointments were within that period. Thus one among the stipulations for reappointment or regularisation is satisfied by both of them.

7. The further requirement is that such appointment shall lasts for 179 days. In the case of petitioner No.1. admittedly that condition has not been satisfied. But in the case of petitioner No. 2 that has been satisfied, continuously serving for 179 days right from the date of appointment, viz., 09.04.1999. Necessarily, the 2nd petitioner comes within the purview of Ext.P6. Therefore, she shall have to be re-appointed, giving the benefit of Ext.P6. But the 1st petitioner is not entitled to the benefit in that regard, going by Ext.P6 as directed by the learned single Judge.

8. It is submitted by the counsel for the petitioners that later than Ext.P6, the matter engaged the attention of the government and as at present, the government is considering regularisation of those physically handicapped temporarily appointed persons appointed during the said period, even though they did not complete 179 days. Necessarily, if government order comes in that line petitioner No.1 will necessarily fall within that. Therefore, it is made clear that the

re-appointment of petitioner No.1 will be dependent on the order, if any, to be passed by government. Accordingly, the writ appeal is allowed in part. As regards the 2nd petitioner, the appointment pursuant to Ext.P6 shall be offered within a period of three months.

K.A. ABDUL GAFOOR, JUDGE

K.R. UDAYABHANU, JUDGE.

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